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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 552

EMORY S. LAND, ET AL., Former Members of the United States Maritime Commission, and CHARLES SAWYER, Secretary of Commerce, PETITIONERS

v.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of Charles Sawyer, Secretary of Commerce, and on behalf of Emory S. Land and other former members of the

United States Maritime Commission, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case on January 31, 1951.

OPINIONS BELOW

The opinion of the district court on the merits (R. in No. 353, at 258-275) is reported at 82 F. Supp. 919. The opinion of the court of appeals on the merits (R. in No. 353, at 2144-2158) is reported at 184 F. 2d 245. The memorandum opinion of the district court on stay of execution (Tr. 2246; Supp. R. 57) is not reported. The opinion of the court of appeals on the form of judgment (R. 42-47) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 31, 1951 (R. 46). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

Respondents brought suit to compel members of the Maritime Commission to turn over to them the controlling stock of a steamship line, alleged by respondents to have been pledged rather than transferred outright to the Commission in 1938. The court below held the transfer to be a pledge and, on appeal from the final judgment entered upon its mandate, that the judgment was enforceable to give respondents possession of the stock

against the defendants, who no longer are connected with the Commission or its successor agency, and against the Secretary of Commerce, who is not a party to the action.[1] The questions here presented are:

1. Whether the immunity of the United States from suit may be avoided by permitting a judgment entered against former Government officials as personal tort-feasors to be enforced, under Rules 70 and 71 of the Federal Rules of Civil Procedure, against a Government official who holds the stock solely as agent for the United States, under Reorganization Plan No. 21 of 1950 and the specific direction of the President, and pursuant to the United States' claim of title, which has not been litigated.

2. Whether judgment for possession may be entered against former Government officials, although they are now out of office and could not possibly obey the judgment.

3. Whether the Secretary of Commerce, who appeared specially to protest the entry of a judgment affecting the interests of the United States in the property, has standing to appeal without submitting himself to the jurisdiction of the district court.

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[1] There has been filed with this petition a petition for rehearing of this Court's denial of a petition for writ of certiorari to bring up the decision of the court below on the merits. No. 353, October Term, 1950.

4. Whether Section 207 of the Merchant Marine Act of 1936 authorizes the Maritime Administration to acquire title to the transferred stock.

STATUTE AND RULES INVOLVED

The relevant provision of Section 207 of the Merchant Marine Act of 1936, as amended, 49 Stat. 1985, 46 U.S.C. 1101, *et seq.*, and the provisions of F.R.C.P. 65(d), 70, and 71 are set forth in the Appendix, *infra,* pp. 21-23.

STATEMENT

Respondents brought this suit on November 6, 1945, to recover from the then members of the Maritime Commission those shares of the common stock of the American President Lines (formerly Dollar of Delaware) which they had transferred to the Commission pursuant to an "Adjustment Agreement of August 15, 1938." Their major contention was that the stock had been pledged, that the underlying debt had been paid off, and they were, therefore, entitled to return of the stock. The defendant's contention was that the suit was an unconsented one against the United States, and, on the merits, that title to the stock had been transferred outright to the United States, acting through the Maritime Commission, and the 1938 agreement was not one of pledge. For a full statement of the facts, see the Petition for a Writ of Certiorari in No. 353, this Term, at pp. 3-11, 20-25, and the accompanying Petition for Rehearing in No. 353, at pp. 10-18.

The suit was originally dismissed by the district court for want of jurisdiction, as a suit against the United States. The Court of Appeals for the District of Columbia Circuit reversed. 154 F. 2d 307. This Court affirmed, stating that the members of the Maritime Commission would be individual tort-feasors if the Commission (a) had no authority to acquire the stock, or (b) had taken it as a pledge. 330 U.S. 731.[2] The district court, after a lengthy trial, ruled both issues against the respondents (R. in No. 353, at 258-275). 82 F. Supp. 919. The court of appeals reversed, holding that it was unnecessary to decide whether the Commission had authority to acquire the stock, because the transaction should be viewed as one of pledge rather than sale (R. in No. 353, at 2144-2158). 184 F. 2d 245. This Court denied certiorari last November. No. 353, this Term; 340 U.S. 884.

On May 24, 1950, Reorganization Plan No. 21 of 1950.[3] became effective. Under Sections 204, 305 and 306 of that plan, the Maritime Commission was abolished, its functions were transferred to the Secretary of Commerce, and its property and records were transferred to the Department of Commerce. In connection with the petition for

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[2] In *Larson* v. *Domestic and Foreign Commerce Corporation*, 337 U.S. 682, this Court explained its *Dollar* decision as based on the ground that the members of the Commission "acted in excess of their authority as public officers." 337 U.S. at 702, note 26.

[3] 15 F. R. 3178, following 5 U.S.C.A. 1333-15.

a writ of certiorari in No. 353, the Solicitor General in this Court moved to substitute the Secretary of Commerce as party defendant, pursuant to Section 9(b) of the Reorganization Act of 1949 (63 Stat. 203, 5 U.S.C., Supp. III, 133z.7(b)). Respondents opposed. This Court did not act on the motion. No. 353, this Term.

After this Court's denial of certiorari, the mandate of the court of appeals issued on November 17, 1950. The President, on November 30, 1950, wrote the Secretary of Commerce as follows (R. 24):

> As you know, the United States claims outright ownership of this stock. Impairment of the Government's title to this stock would seriously affect the public interest.
>
> The Supreme Court, which has expressed no opinion on the merits of Dollar's claim, has specifically said that the judgment in this case is not binding on the United States.
>
> Accordingly, you are directed to continue to hold this stock on behalf of the United States. All appropriate action should be taken to assert and maintain the Government's rights as owner of this stock.

In the district court, respondents filed a motion for entry of judgment and to call up for hearing the motion (in this Court) to substitute Charles Sawyer, Secretary of Commerce (Tr. 2141; Supp. R. 7). After argument, and special appearance by the Secretary of Commerce (Tr. 2152; Supp.

R. —), the district court, on December 11, 1950, entered final judgment as follows (Tr. 2218):

> 1. That in conformance with and obedience to the said mandate of the Court of Appeals the judgment of this Court of the 2nd day of December 1948 is hereby vacated.
>
> 2. That under the provisions of Rule 70 FRCP, which specifies "If real or *personal* property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law," that title to the shares in question is in the plaintiffs, since they were never legally divested of the same, and the asserted title of all others arising out of the same transaction to the contrary null and void, and that they are entitled to the delivery and possession of said shares, and entitled further as provided by said Rule if such may be necessary, "... to a writ of execution or assistance upon application to the clerk."

Both the United States and the Secretary of Commerce appeared specially and moved to vacate the judgment (Tr. 2220, 2222; Supp. R. —). The District Court denied the motions on December 15, 1950 (Tr. 2225; Supp. R. —). The United States, the Secretary of Commerce, and the parties defendant that same day noted appeals and applied for a stay pending appeal (Tr. 2226-9; Supp. R. —). The stay was granted December 18, 1950 (Tr. 2247; Supp. R. —).

Respondents on December 26, 1950, moved the court of appeals to dismiss the appeals. The court of appeals on January 31, 1951, by *per curiam* opinion (amended on February 8, 1951) (R. 42-46, 47): (a) dismissed the appeals of the United States and the Secretary of Commerce; (b) ruled that "Obedience to the order about to be entered pursuant to this opinion is, therefore, enforceable against [the Secretary of Commerce], and he is liable, under Rule 71, supra, to the same process for enforcing obedience to that order as if he were a party." (R. 45); and (c) directed that the second paragraph of the judgment be amended to read (R. 44):

> 2. That plaintiffs are entitled to possession of the shares as against defendants, and the defendants are ordered and directed to deliver forthwith to the plaintiffs the said shares. The possession to which plaintiffs are entitled is an effective possession of the shares. In so far as such right requires action on the part of defendants in addition to physical delivery of the certificates, such action is hereby directed to be taken. Plaintiffs are entitled under this judgment to all rights belonging to possessors of the shares. Plaintiffs are further entitled, as provided by Rule 70 of the Federal Rules of Civil Procedure, "to a writ of execution or assistance upon application to the clerk" of this court, if such writ becomes necessary.

The court of appeals also said that on the prior

appeal "it was here held that (1) the Commission had no power to acquire outright ownership of the stock" (R. 43). In fact, it had held on the prior appeal that "we do not decide that question, because we do not reach it" (R. in No. 353, at 2147).[4]

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In ordering the defendants to deliver the shares forthwith and to take action, in addition to physical delivery, necessary to give "effective possession," and holding that respondents are entitled "to all rights belonging to possessors of the shares," thus, in effect, holding that in an action against Government officials as personal tort feasors the courts have jurisdiction to oust the United States of its possession of property held under a claim of ownership which has not been adjudicated, and to impair the rights of the United States in and to such property.

2. In holding that a judgment for possession of the property against Government officials out of office may be enforced against another Government official, not a party to the action, who acquired by operation of law custody of the property in his official capacity on behalf of the United States as owner.

3. In holding that a judgment for possession of

[4] At that stage of its opinion it considered that the Government's position "has strong basis" (R. in No. 352, at 2147); at a later stage, that a supporting argument for the same result "is elusive and indirect" (R. in No. 353, at 2156).

property may be entered against former Government officials who are now out of office and have no vestige of custody or control of the property.

4. In holding that the Secretary of Commerce, who appeared specially in the District Court without submitting to its jurisdiction, has no standing to appeal from a judgment adversely affecting his official interests and those of the United States.

5. In holding that Section 207 of the Merchant Marine Act of 1936 does not authorize the Government (acting formerly through the Maritime Commission, now through the Maritime Administration) to acquire outright title to stock in an operating steamship corporation.

REASONS FOR GRANTING THE WRITS

1. The court below, with some justice, considered it "paradoxical" that this litigation should be pursued upon the hypothesis that the United States had no interest in the property and yet lead to a judgment which, while it could not conclude the United States, would be effective against Government officials (R. 43). Its revised form of judgment shows an attempt to give respondents an effective judgment while yet taking nothing from the United States. In truth, it does not accomplish the latter objective, but serves only to confuse still further the law surrounding suits against the United States.[5]

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[5] Whether the judgment serves the former objective is not in issue here, but we may note that the American President

Although it struck out the provisions of the district court judgment purporting to adjudicate the title of the United States to the stock, the court below, in holding that the judgment for possession may be enforced by writ of assistance against the Secretary of Commerce, who was not a party, necessarily assumed jurisdiction to oust the United States of *its* possession of the stock under a claim of title. "For the sovereign can act only through agents and, when an agent's actions are restrained, the sovereign itself may, through him, be restrained." *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 688. In effect, the judgment would coerce the Secretary of Commerce, who has official custody on behalf of the United States, physically to remove the stock certificates from the Government safe in which they are now lodged (R. 382), hand them over to respondents, and, perhaps, even to endorse them in the name of the Maritime Commission. The rule of *United States* v. *Lee*, 106 U.S. 196, as applied by this Court's decision in the present case, does not go so far. The courts have jurisdiction to remove a

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Lines' by-laws provide that the corporation need not recognize any claim except by the holder of record (R. in No. 353, p. 1457; *Salt Dome Oil Corp.* v. *Schenck*, 41 A. 2d 583 (Sup.Ct. Del.)), and that if there be substantial conflicting claims of ownership the transfer agent is not required to register a transfer even upon the surrender of properly endorsed certificates of stock. See, *e.g.*, *Mackenzie* v. *Engelhard & Sons Co.*, 266 U.S. 131, 143; *Telegraph Co.* v. *Davenport*, 97 U.S. 369, 371-2.

defendant Government official from possession of disputed property or to enjoin him from taking action injurious to the plaintiff. *Cunningham* v. *Macon & Brunswick R. R. Co.*, 109 U.S. 446, 452; *Belknap* v. *Schild*, 161 U.S. 10, 19; *Tindal* v. *Wesley*, 167 U.S. 204, 223-4; *Scranton* v. *Wheeler*, 179 U.S. 141, 152-3. But coercion of the Secretary of Commerce to take affirmative action to remove the property from the possession of the Government and transfer it to respondents is not sanctioned by any decision of this Court. The Secretary could take such action only as an official, not as a private individual, and the clearest sign that relief is being improperly awarded against the Government is that the agent who receives the court's directive can only comply in his official capacity. *Larson* v. *Domestic & Foreign Commerce Corp.*, *supra*, at 689, 695, 698-9; *Wells* v. *Roper*, 246 U.S. 335, 337; *Great Northern Ins. Co.* v. *Read*, 322 U.S. 47, 50.

Furthermore the judgment, though not in terms adjudicating title, casts a direct cloud on the Government's title. The Maritime Administration obviously could not sell the stock, as has long been planned (see R. 30). There would be considerable doubt whether the Secretary of Commerce would be entitled to receive, and endorse into the Treasury, any subsequent dividends paid upon the stock. Respondents would undoubtedly assert the right to vote the stock. In short, it is plain that despite the court of appeals' *caveat* as to the Government's

title, the rights of the United States as owner of the stock have been seriously invaded by the judgment directed below.

These are not merely formal or technical matters. As the President's letter of November 30th (*supra*, p. 6) indicates, the United States continues to claim ownership. The President and Attorney General have concluded that their public responsibility would not, in the absence of review by this Court, permit them to acquiesce, so long as appropriate avenues are open, in the miscarriage of justice involved in the holding below that the stock transfer was merely a pledge. This is true not only because the disposition of a Government asset worth more than $8,000,000, is involved, but also because, in view of our critical international situation, it might well be disastrous to turn over even temporary control and management of this vital shipping link to the Orient to the very interests whose mismanagement of the line forced the Government to acquire the stock in the first place.

2. The judgment as directed by the court below would theoretically run only "against [the] defendants" (R. 44), who are the former members of the Maritime Commission. But the court also expressly holds that the judgment may be enforced against the Secretary of Commerce under Rule 71 of the Federal Rules of Civil Procedure (R. 45, 47). In so holding, it has improperly applied

Rule 71 in substantial conflict with the decisions of this and other federal courts.

The last clause of Rule 71 provides:

> when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

Under the Rule, the crucial inquiry is whether the judgment may be lawfully enforced against the Secretary, who is not a party. The court below holds that it may, on the ground that the vesting in the Secretary of the function of holding custody of the stock certificates constituted a violation of an order entered by the district court in 1947; that order directed that the defendants not dispose of the possession or custody of the stock without notice to respondents. This holding seems plainly erroneous. The Secretary of Commerce acquired custody purely through operation of law, the Presidential Reorganization Plan of 1950, not through any act of transfer by the former members of the Maritime Commission, and the 1947 order was obviously not directed at such a legislative change in custody.

Under established equity practice, reflected in Rule 65(d), the Court's judgment can reach only to parties, their employees and agents, and those who aid and abet a party to violate the injunction.[6]

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[6] See *Lamb* v. *Cramer*, 285 U.S. 217, and *In re Lennon*, 166 U.S. 548.

An injunction against a personal tort does not reach to successor officials. *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U.S. 229, 234-235; see *United States* v. *Boutwell,* 17 Wall. 604, 608.[7] It does not reach to other officials, similarly situated but not joined. *Scott* v. *Donald,* 165 U.S. 107, 117; *Chase National Bank* v. *City of Norwalk,* 291 U.S. 431, 436-437. It does not reach to employees of a party after they have left his employ. *Alemite Mfg. Corp.* v. *Staff,* 42 F. 2d 832, 833 (C.A. 2); *Harvey* v. *Bettis,* 35 F. 2d 349, 350 (C.A. 9). Whether it reaches to a corporate successor depends upon the extent to which the successor is viewed as a true successor, or as a mask for, or the same person as, the party defendant. *Regal Knitwear Co.* v. *National Labor Relations Board,* 324 U.S. 9; *Walling* v. *Reuter Co.,* 321 U.S. 671. In short, as Judge Learned Hand said in the *Alemite* case, "the only occasion when a person not a party may be punished, is when he has helped to bring about * * * an act of a party." The decision below can be squared with none of those cases.

3. The court of appeals ordered the defendants, the former members of the Maritime Commission, "to deliver forthwith to the plaintiffs the said shares" and directed them to take such further action, in addition to physical delivery of the cer-

[7] See also, *Swetland* v. *Curtiss Airports Corp.,* 14 FRS 65d.23 (N.D. Ohio), holding that an injunction against a private landowner does not bind the county which acquires by eminent domain.

tificates, as might be necessary to give plaintiffs "an effective possession of the shares." But all of the defendants have been out of public office since May 24, 1950, and their positions were abolished on that date by Reorganization Plan No. 21 of 1950.[8] The defendants therefore no longer have any custody of or control over the stock certificates and cannot possibly obey the judgment. See *United States* v. *Hamburg-American Co.*, 239 U.S. 466, 475-7; *Mills* v. *Green*, 159 U.S. 651, 653-4; *Oriel* v. *Russell*, 278 U.S. 358, 363; *McMurtrey* v. *Clark*, 157 F. 2d 703 (C.A. D.C.).

In the light of this fact, and the fact that respondents have never sought to join the Secretary of Commerce as a party, it appears that the action cannot be maintained because of the absence of a defendant against whom the judgment may operate. See *Snyder* v. *Buck*, 340 U.S. 15.

4. The court below dismissed the appeals of the United States and the Secretary of Commerce because they, in their special appearances in the district court, declined to submit themselves to that court's jurisdiction.[9] The anomalous result

[8] Some defendants had left office even previous to that date either by resignation or expiration of term of office (R. 56, 257).

[9] Of course, the Attorney General has no authority to submit the United States, or the Secretary of Commerce in his official capacity, to the court's jurisdiction. *United States* v. *United States Fidelity and Guaranty Co.*, 309 U.S. 506; *United States* v. *Shaw*, 309 U.S. 495; *Minnesota* v. *United States*, 305 U.S. 382; *Munro* v. *United States*, 303 U.S. 36; *Stanley* v. *Schwalby*, 162 U.S. 255.

is that parties who appear specially to assert a court's lack of jurisdiction to effect their interests in property are deprived of their right to correct by appellate review a judgment beyond the district court's jurisdiction. As a general rule none but a party to the action can take an appeal. See, e.g., *Ex parte Leaf Tobacco Board of Trade,* 222 U.S. 578; *Guion* v. *Liverpool, London, & Globe Insurance Co.,* 109 U.S. 173. But it is equally plain that one who appears specially to object to the court's jurisdiction over him does not have to submit to that jurisdiction in order to appeal an adverse decision. *Hassler* v. *Shaw,* 271 U.S. 195; *Davis* v. *O'Hara,* 266 U.S. 314.

The Secretary of Commerce has no connection with this litigation except by virtue of his official position and the effect of Reorganization Plan No. 21 of 1950. He insists that his custody is on behalf of the United States. His special appearance was as an official of the United States. The Government itself may appeal on the foundation of a special appearance. *United States* v. *Minnesota,* 95 F. 2d 468, 469 (C.A. 8), affirmed, 305 U.S. 382, 384; *Missouri* v. *Fiske,* 290 U.S. 18, 21, 25; *Stanley* v. *Schwalby,* 162 U.S. 255, 264, 265, 266, 270; *The Exchange,* 7 Cranch 116, 118, 120, 147.[10] So, we should

[10] *South Carolina* v. *Wesley,* 155 U.S. 542, denied an appeal based upon a mere "suggestion." If the language reaches to a special appearance, it has been restricted by the later decisions cited above. *United States* v. *Seigel,* 168 F. 2d 143 (C.A. D.C.), cited by the court below (R. 44), was a case where the

suppose, may the Government official who is interested only in his official capacity and who is threatened with enforcement of a judgment entered against others.

5. When this case was before this Court on our previous petition for certiorari (No. 353, this Term), the court of appeals had explicitly held that it did not decide whether Section 207 of the Merchant Marine Act of 1936 (49 Stat. 1988, 52 Stat. 954, 46 U.S.C. 1117) (*infra,* p. 21) authorized the Maritime Commission to acquire title to the stock (R. in No. 353, at 2147). Now, the court of appeals contradicts its own former opinion and states, "it was here held that (1) the Commission had no power to acquire outright ownership of the stock * * *" (R. 43). We suggest that if an administrative agency is to be held to have been in error in construing its basic statute over a 15 year period, it should at the least have a decision on that issue rather than a mistaken and enigmatic reading of a prior decision.

The Maritime Administration (as was its predecessor, the Maritime Commission) is authorized to "enter into such contracts, upon behalf of the United States * * * as may, in its discretion, be necessary to carry on the activities authorized by this Act, or to protect, preserve, or improve

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United States failed to substitute a successor within the time allowed by Rule 25(d) or to make any form of appearance, and simply filed an appeal from the dismissal of an action brought by its former official.

the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter."

The conclusion that this broad statutory grant of authority does not extend to the acceptance of property in compromise of a debt (here the suretyship liability of two of respondents), or to protect the security for Dollar of Delaware's debts to the Government by eliminating management which was considered to be the prime cause of the debtor's inability to meet its obligations, is of considerable importance to the administration of the Merchant Marine Act. The court of appeals' conclusion seems clearly erroneous in light of the fact that Congress intended the Maritime Commission, as in the case of the former Shipping Board, to have all the powers of a business corporation, including the power to settle claims and to protect its accounts. *United States ex rel. Skinner & Eddy Corp.* v. *McCarl,* 275 U.S. 1, 5; *Standard Oil Co. of California* v. *United States,* 59 F. Supp. 100, 106 (S.D. Cal.), affirmed, 156 F. 2d 312 (C.A. 9); H. Rep. 2168, 75th Cong., 3d sess., p. 17-8; S. Rep. 1618, 75th Cong., 3d sess., p. 5.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY, 1951.

APPENDIX

1. Section 207, Merchant Marine Act of 1936 (Act of June 29, 1936, 49 Stat. 1988, as amended by Act of June 23, 1938, 52 Stat. 954, 46 U.S.C. 1117):

> The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this Act, or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Commission's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444): *Provided,* That it shall be recognized that, because of the business activities authorized by this Act, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanling any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Commission from the provisions of this Act.

2. Rule 65(d) F.R.C.P.

> FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in

terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

3. Rule 70 F.R.C.P.

JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

4. Rule 71 F.R.C.P.

PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES. When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

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